

SUBCHAPTER N—MISCELLANEOUS

PART 131—CERTIFICATES OF AUTHENTICATION

Sec.

131.1 Certification of documents.

131.2 Refusal of certification for unlawful purpose.

§ 131.1 Certification of documents.

The Authentication Officer, Acting Authentication Officer, or any Assistant Authentication Officer designated by either of the former officers may, and is hereby authorized to, sign and issue certificates of authentication under the seal of the Department of State for and in the name of the Secretary of State or the Acting Secretary of State. The form of authentication shall be as follows:

In testimony whereof, I, _____, Secretary of State have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer, Acting Authentication Officer, or an Assistant Authentication Officer, of the said Department, at _____ in _____, this _____ day of _____ 19____

(Secretary of State)

By _____
(_____) Authentication
Officer, Department of State)

(22 U.S.C. 2651a)

[61 FR 39585, July 30, 1996]

§ 131.2 Refusal of certification for unlawful purpose.

(a) The Department will not certify to a document when it has good reason to believe that the certification is desired for an unlawful or improper purpose. It is therefore the duty of the Authentication Officer to examine not only the document which the Department is asked to authenticate, but also the fundamental document to which previous seals or other certifications may have been affixed by other authorities. The Authentication Officer shall request such additional information as may be necessary to establish that the requested authentication will

serve the interests of justice and is not contrary to public policy.

(b) In accordance with section 3, paragraph 5 of the Export Administration Act of 1969 (83 Stat. 841, Pub. L. 91-184) approved December 30, 1969, documents which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by foreign countries against countries friendly to the United States shall be considered contrary to public policy for purposes of these regulations.

(R.S. 203, sec. 4, 63 Stat. 111, as amended, sec. 1733, 62 Stat. 946, secs. 104, 332, 66 Stat. 174, 252; 22 U.S.C. 2657, 2658, 28 U.S.C. 1733, 8 U.S.C. 1104, 1443)

[22 FR 10882, Dec. 27, 1957, as amended at 30 FR 12732, Oct. 6, 1965; Dept. Reg. 108.621, 35 FR 8887, June 9, 1970]

PART 132—BOOKS, MAPS, NEWSPAPERS, ETC.

§ 132.1 Purchase.

The purchase by the Department of State of books, maps, newspapers, periodicals, and other publications shall be made without regard to the provisions of the act approved March 3, 1933 (sec. 2, 47 Stat. 1520; 41 U.S.C. 10a), since determination has been made by the Secretary, as permitted by the provisions of the act, that such purchase is inconsistent with the public interest.

(80 Stat. 379; 5 U.S.C. 301)

[22 FR 10883, Dec. 27, 1957]

PART 133—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

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- 133.510 What actions will the Federal Government take against a recipient determined to have violated this part?
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- 133.605 Award.

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(2) A recipient who is an individual	A, C and E.
(3) A Department of State awarding official	A, D and E.

- 133.610 Controlled substance.
- 133.615 Conviction.
- 133.620 Cooperative agreement.
- 133.625 Criminal drug statute.
- 133.630 Debarment.
- 133.635 Drug-free workplace.
- 133.640 Employee.
- 133.645 Federal agency or agency.
- 133.650 Grant.
- 133.655 Individual.
- 133.660 Recipient.
- 133.665 State.
- 133.670 Suspension.

AUTHORITY: 22 U.S.C. 2658; 41 U.S.C. 701, *et seq.*

SOURCE: 68 FR 66557, 66582, Nov. 26, 2003, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 133 appear at 68 FR 66582, Nov. 26, 2003.

**Subpart A—Purpose and
Coverage**

§ 133.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 133.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the Department of State; or

(2) A Department of State awarding official. (See definitions of award and recipient in §§ 133.605 and 133.660, respectively.)

(b) The following table shows the subparts that apply to you:

§ 133.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the Procurement Executive determines that the application of this part would be inconsistent with the international obligations of the United

States or the laws or regulations of a foreign government.

§ 133.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or sus-

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pended for a violation of the requirements of this part, as described in § 133.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 133.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 133.205 through 133.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 133.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 133.230).

§ 133.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 133.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 133.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 133.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 133.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 133.205 and an ongoing awareness program as described in § 133.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) The performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more ...	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the Department of State awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 133.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 133.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

- (1) Be in writing;
- (2) Include the employee's position title;
- (3) Include the identification number(s) of each affected award;
- (4) Be sent within ten calendar days after you learn of the conviction; and
- (5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 133.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each Department of State award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the Department of State official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available

for inspection upon request by Department of State officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Department of State awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the Department of State awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 133.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a Department of State award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

- (1) In writing.
- (2) Within 10 calendar days of the conviction.

(3) To the Department of State awarding official or other designee for each award that you currently have, unless § 133.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

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§ 133.301 [Reserved]

Subpart D—Responsibilities of Department of State Awarding Officials

§ 133.400 What are my responsibilities as a Department of State awarding official?

As a Department of State awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

- (a) Subpart B of this part, if the recipient is not an individual; or
- (b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ 133.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Procurement Executive determines, in writing, that—

- (a) The recipient has violated the requirements of subpart B of this part; or
- (b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 133.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Procurement Executive determines, in writing, that—

- (a) The recipient has violated the requirements of subpart C of this part; or
- (b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 133.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in

§ 133.500 or § 133.505, the Department of State may take one or more of the following actions—

- (a) Suspension of payments under the award;
- (b) Suspension or termination of the award; and
- (c) Suspension or debarment of the recipient under 2 CFR part 601, for a period not to exceed five years.

[68 FR 66557, 66582, Nov. 26, 2003, as amended at 72 FR 10035, Mar. 7, 2007]

§ 133.515 Are there any exceptions to those actions?

The Procurement Executive may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Procurement Executive determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 133.605 Award.

Award means an award of financial assistance by the Department of State or other Federal agency directly to a recipient.

(a) The term award includes:

- (1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.
- (2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule 22 CFR part 135 that implements OMB Circular A-102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

- (1) Technical assistance that provides services instead of money.
- (2) Loans.
- (3) Loan guarantees.
- (4) Interest subsidies.
- (5) Insurance.
- (6) Direct appropriations.
- (7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

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§ 133.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 133.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 133.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 133.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 133.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 133.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ 133.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in con-

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nection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 133.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 133.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 133.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

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§ 133.655 Individual.

Individual means a natural person.

§ 133.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 133.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 133.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

PART 134—EQUAL ACCESS TO JUSTICE ACT; IMPLEMENTATION

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AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 46 FR 58301, Dec. 1, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 134.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called “the Act” in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called “adversary adjudications”) before the Department of State. An eligible party may receive an award when it prevails over the Department of State, unless the Department of State’s position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Department will observe to make them.

§ 134.2 When the Act applies.

The Act applies to any adversary adjudication pending before the Department of State at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were